

September 13, 2007

THRU: Long Range Planning Task Force  
Flathead County Montana

TO: Board of County Commissioners  
Flathead County Montana

FRM: Long Range Planning Task Force  
Land Use Committee

Re: Committee Report: Land Use Issues

**General:**

Land use patterns in Flathead County are erratic. There is no consistency in what types of development occur or where they occur. The effects of this inconsistency were not apparent 15-20 years ago when the county population was near 50,000 but as the population nears and exceeds 100,000 the inconsistencies are becoming increasingly noticeable. There are many issues that contribute to this condition but they all relate at least in part to the central issue of the cost of providing public services. The county does not have an adequate fiscal structure to generate sufficient funds to support the services and infrastructure demanded by rural (outside of incorporated cities) residents. Without the assessment of the real cost of providing services, residents and businesses locate in areas that they believe are affordable but only because the real costs of locating in a rural area is being deferred or transferred to other residents.

When development does not pay the real public costs of its location the normal restrictions on where people and businesses locate are distorted and lead to erratic development. Development that adversely impacts nearby neighborhoods and critical public facilities.

Development that also:

- Increases traffic
- Degrades view-sheds
- Lowers air and water quality
- Increases risk of loss by wildland fires.
- Stresses public services and emergency response delivery

Flathead County is hardly the only WESTERN U.S. County that has this issue, but the very large difference between the services demanded by citizens and the financial resources available to satisfy those demands makes this issue more acute.

**Purpose:**

The purpose of this report is to:

1. Provide a reply to the Task Force's assignment given in February 2007  
(*Attachment A*)
2. Describe the committee's analysis and sources of information.
3. Present findings.
4. Present recommendations.

**Land Use Committee:**

The Land Use Committee members and meeting dates are at *Attachment B*.

**Document Information Sources:**

- *Flathead County Growth Policy*: the committee kept the views provided by the public described in Chapter One constantly in mind. This is what the public wants county government to do and the government is charged with determining the means. Considerable discussion was concentrated on protecting views, managing transportation, maintaining the identity of rural communities, managing and protecting the natural and human environment and property rights.
- *Physical Constraint Map*: the county planning department provided a map showing areas that have significant constraints to development. This included water features, flood plains and steep slopes. It was noted that the areas that are relatively unconstrained are few.
- *Traffic Data*: data from last year's Road Transportation Report was provided. This report states that county traffic is increasing faster than the population. Some of the important recommendations in this report are:
  - The county needs to maintain mobility on the corridor arterials
  - The county needs a reliable financial support structure for the road system that does not rely on property taxes
  - The county needs a road improvement strategy for the future.
- *Solid Waste Generation Data*: no matter where people go they generate trash. The county Solid Waste District has a good record of where trash is being generated in the county because of the rural green box sites. Tonnage records from 1998 to 2004 were examined. During this time total tonnage in the county increased from a little over 26,000 tons to a little over 40,000 tons. A 54% increase that is much faster than the population growth during the same period. This could be due to people producing more trash per person or that there are more people in the county than the census records.

- *Population Density Map:* the county planning department provided a map showing population density using septic data. According to the map population in the county is widely dispersed. This supports the census data that reports 2/3 of the county lives in rural areas.
- *Fire Risk Map:* a committee member provided a map completed as a result of a recent county fire risk study. When the fire risk map is overlaid on the septic data an observer can see the significant development that is happening in high and extreme fire risk areas.
- *Utilities Map:* a committee member provided a map with the major utilities using the public right-of-way shown.
- *Electrical Service Data:* connection data from Flathead Electric was provided. The data covers the period 2000-2005 and shows annual connection growth has increased from 1244 in 2000 to 2200 in 2005. This data supports the solid waste data that indicates there are more people in the Flathead than the U.S. Census states.
- *County Road Map:* a county road map from the Road Transportation Study was used. This map also included the LRPTF Transportation Subcommittee's scheme for traffic sheds.
- *Comparative County Cost Data:* cost of services data from a 2004 county report shows comparative costs between three Montana counties of similar population (Cascade, Gallatin, Flathead). Despite having similar populations, Flathead County has spent significantly more for public services during the period 1990-2004 than the other counties.
- *County Water and Sewer Districts Map:* a committee member provided a map showing the areas serviced by county water and sewer districts. It was noted that several of these districts have treatment plants that are nearing their design capacity.
- *Groundwater Table Map:* a map based on data from the Flathead Lakers organization was used to look at groundwater depth in the central valley area. The county has large areas where groundwater is less than 50 feet from the surface.
- *Wildlife Maps:* a committee member provided maps showing wildlife habitat. Winter habitat is critical to the survival of wildlife in the county and this habitat occurs on private as well as public lands. Threatened and endangered species also utilize private lands for migration routes.

- *County Parks Map and Catalog*: the county parks department provided a map and catalog describing the characteristics of county parks.
- *Lot Number and Size Data*: the county planning department provided historic data on subdivision lots located in the county. While subdivision activity varies widely from year to year, recent (2000- 2006) approved final plat activity uses about 2000 acres per year. This does not account for family transfer activity, which would increase the acreage subdivided substantially.
- *USDA Agricultural Census*: data from county agricultural censuses was examined. While land in farms has decreased 28% during the period 1978 to 2002, the land used for harvested crops and irrigated land has increased slightly. Farm income has doubled during the same period.
- *Natural Resources Summary*: a committee member provided a summary of recommendations on natural resources based on the LRPTF Natural Resource Subcommittee's report to the task force in June 2006.
- *USGS Water Quality Information*: a committee member provided information from the US Geological Survey on water quality monitoring in the Flathead basin.

#### **Interview Information Sources:**

In addition to documents the committee also interviewed persons knowledgeable in special areas of interest.

- *View Shed Planning (Bob Horne, Planning Director, City of Whitefish)*: Bob Horne gave the committee his experience with view shed planning based on his experiences in the Jackson Hole area of Wyoming.

Methods to view shed planning include:

- Image based planning that cover areas over long distances.
  - Corridor based along transportation corridors that emphasize nearby views.
  - A mix between image based and corridor approaches.
- *Geographic Information System(GIS) use (Tom Reynolds, Director, GIS Department, Flathead County)*: Tom Reynolds discussed with the committee the use of GIS. Tom advised the committee that he could produce a county map with information layers that could be turned on or off to display whatever combination of information the user would like. The map could be produced in a format that anyone with a computer could view (.pdf). The committee discussed the type of information that should be used as layers and Tom agreed to produce the map for the May 31 meeting. The map was produced and presented to the committee at the May meeting. Copies of the map were provide to committee members and is

available on the county FTP site. The map has been an important tool used in the analysis for this report.

- *Property Rights (Jonathan Smith, Deputy District Attorney, Flathead County):* Jonathan Smith led a discussion of property rights and a history of past legal precedents that have occurred in MT and the nation involving different property right cases.

Important points of discussion were:

- Property rights have a long history and have changed over time.
- While government has the power to regulate the use of private property, regulation that prohibits all reasonable use can be considered a taking.
- A variance procedure allows for flexibility when land use regulation should not be applied due to hardship or a specific characteristic of the property.
- MT does not have a statutory taking law that lowers the taking threshold from the US Constitution standard.

- *Conservation Tools (Marilyn Wood, Director, Flathead Land Trust):* Marilyn Wood led a discussion concerning conservation tools that may be useful in county land use planning.

Major items were:

- Conservation easements are voluntary agreements between a private landowner and a non-profit or public entity. The landowner agrees to give up development rights in exchange for cash, tax credits or both. Some easements are donations.
- Easements often increase the value of adjoining lands.
- Use of easements is common in MT. Over 1.5 millions acres are under easements in the state.
- Beside easements other conservation tools are cluster development, land owner assistance centers and transfer of development rights.

## **FINDINGS:**

Based on the information provided, the committee has the following findings:

### Revenue/Service Issues

#### Findings

- Compared to Montana counties of similar population, Flathead County spends more for public services.
- Present fiscal tools for the county do not provide the resources needed to maintain desired services for rural residents.
- The “one size” fits all revenue system does not work.

- Consequences of unsuitable land use planning decisions limit the options of distributing revenue equitably across the county.

#### Discussion:

Information from cost of service studies and recent public discussion concerning road paving and the number of available sheriff deputies, clearly show that the revenues systems authorized by the state and used by the county are inadequate.

This is a result of many years where development has occurred in areas where the taxes paid for public services do not support the level of service demanded by residents. The situation is made worse by the large size of the county, the high proportion of residents living in the wildland urban interface and the higher public service expectations of new residents.

A tax system based on the value of property will not provide a revenue stream that balances resident service demand with what residents are actually paying. A system based on property value will either provide too much revenue in the case of high value property in easily serviced areas or too little in the case of lower valued properties in high cost service areas. The latter is commonly the case in Flathead County.

Rural Special Improvement Districts (RSID) are designed to correct deficiencies in public facilities and are a valuable tool to help in the revenue/service imbalance that exists in most of the county. But RSID's suffer from several characteristics that limit their effectiveness.

- RSID's address only capital projects such as roads. They do not address service issues such as public safety.
- RSID's are complex to form and to administer. It would be very difficult to correct everything needed in a large county like the Flathead using only RSID's.
- RSID's require organized local support, or a waiver of protest, in the area being served or improved.

Impact fees recently enacted by the state legislature are another tool. But similar to RSID's there are significantly limiting factors.

- Impact fees cannot be used to raise the general level of service, only to address the impact of a specific development. They cannot be used in areas where the existing level of service is deficient. There are few county areas where the level of service for rural roads is adequate. Impact fees cannot be used to improve these deficient roads until revenue is found to improve the general level of road service.
- Impact fees are, similar to RSID's, complex to determine and administer.

As long as revenues do not balance service demand, development will continue to occur in inappropriate areas causing erratic and inconsistent land use patterns in the county. Citizens should be able to live where they want but they also must be willing to pay the

real costs of the public services that support them. Presently, under state law, there is no revenue mechanism that assesses rural residents and businesses the real costs of their public services.

### Managing and Protecting the Natural and Human Environment

#### Finding

- An inappropriate level of development, of an uninformed public, is occurring in high-risk wildland fire areas. This lack of awareness places many residents at a higher risk of fire due to both natural and human causes. The potential for significant loss of life and property damage are very high.

#### Discussion:

Forests are an important part of the natural environment in the Flathead. They provide habitat for valuable wildlife, clean surface water, recreational opportunities and a supply of wood products to local manufacturing facilities. It is not surprising that many people want to live in and near forests. But, while forests provide a pleasant living environment they also represent the most potentially catastrophic danger to lives and property in Northwest Montana.

Recently the county completed a comprehensive study of the fire danger in the county. Areas that are subject to forest fire risks were delineated. When these areas are compared to development patterns it can be seen that significant development has and is occurring in areas of extreme or high fire danger.

Forest fires are part of the natural cycle of a forest. It is not a matter of if they will occur, only a matter of when.

#### Finding

- The cumulative effect of human development near unprotected surface water will result in a permanent degradation of the Flathead Valley's water quality.

#### Discussion:

Water is everywhere in the Flathead Valley. An examination of the committee's GIS map shows that there are virtually no valley areas that do not have a stream, pond, lake, wetlands or shallow aquifer (< 50ft). The presence of clean surface water and its connected shallow aquifer is a vital community characteristic. Few things would have more adverse impact in the Flathead Valley than polluted water.

Human activity pollutes the unprotected surface water it is near. The pollution may come from septic tanks, the runoff from chemically treated landscaping, or the runoff from petroleum dripping onto driveways and local roads.

Surface water is connected. Pollution occurring in one area is likely to affect other parts. It may take a generation for the effect to be noticeable but if it occurs it is very difficult if not impossible to reverse.

## Protecting Views

### Finding

- Since commercial development is managed only in zoned areas along major transportation corridors, it is harming important community view-sheds and increasing traffic.

### Discussion:

The Flathead Valley is fortunate that the distant views of our beautiful surrounding mountains are largely public land; unlikely to be developed. But these attractive scenes, valued by residents and visitors alike, are being polluted by close in views. This pollution consists of structures that block views and clutter that distracts. Examples are at *Attachment C*.

The most valuable views are the views from US2 and US93 north of Kalispell. They are valuable simply because the traffic study shows that thousands of people use them. View-shed pollution has occurred in many places but it still not widespread. These corridors should be saved.

It is difficult to see what community benefits accrue to allowing unrestricted commercial development along our major view-shed corridors. Such development disperses commercial activity and increases traffic, as customer must travel more to obtain the goods and services they want. More traffic means more air pollution. Locating businesses that adjoin major transportation arterials increase the number of accesses. More accesses slow traffic and increase the chance of accidents. As accesses and traffic increase traffic lights are installed that change a mobility corridor into stop and go congestion.

### Finding

- The community needs to do more to develop land use/preservation options for rural landowners.

### Discussion:

Review of the USDA Agricultural census show that agriculture remains a valuable and viable part of the county's economy. Farmland has been sold for development but in most cases this was relatively unproductive land that was not valuable to the producer. The land used for harvested cropland and irrigated land has increased slightly over the last 30 years.

Despite the viability of agriculture in the Flathead some landowners will want to divest themselves of rural land. Presently there are few alternatives other than selling for development. Other alternatives can be developed and marketed to rural landowners that will enable them to obtain a reasonable return for their property and preserve valuable watersheds, wildlife habitat and view-sheds for the community.



## Preserving the Rights of Private Property Owners

### Finding

- Public discussion of property rights is seldom based on shared definition of those rights or on any factual information from present law or national/state history.

### Discussion:

As mentioned in Chapter One of the Growth Policy, private property rights are often mentioned in public discourse but seldom defined. When such an important subject is not well understood it has the effect of confusing the discussion and decision process rather than assisting it.

Some of the more common misperceptions are:

- Preservation of property value is a property right.
- In MT any government regulation is a taking.
- Property rights do not change over time.
- Property rights are only about individual landowners.

While citizens may have many different versions of private property rights it is important that government decision makers have an agreed upon definition based on legal precedents. This will insure that when property right issues are part of a land use decision they will be applied in a consistent and understandable manner.

### **RECOMMENDATIONS:**

The committee has the following recommendations-

- **Draft a state law for passage by the next legislature that will give counties the authority to form special districts to provide public services and an alternate to Rural Special Improvement Districts for public infrastructure improvements.**

It is unlikely, with present revenue mechanisms that Montana counties can meet the increasing demands of an area transitioning from rural to urban. New laws that will enable counties to meet the increased demand by increased revenues and thereby align demand with resources are required. It is important that any new legislation be designed to afford an equitable balance between costs and benefits to each citizen. An outline of such a law is at *Attachment D*.

- **Devise appropriate strategies for the improvement of public services.**

Even with increased revenues there will not be enough to meet all demands. The county needs a strategy to use the revenue for the most value. The LRPTP Transportation Committee provided an example of such a strategy for county roads in

2006. Increasing revenues without a cogent strategy to spend the revenues will only lead to an unrealistic rise in expectations. Pertinent parts of the report are at *Attachment E*.

- **County departments need to collect data that will show how servicing different areas of the county affect their costs.**

Different areas of this very large county have different costs associated with providing local government services. We need to devise a standardized method of collecting information on costs associated with specific geographic areas.

- **County departments should evaluate the fiscal impact of land use changes.**

New zoning , neighborhood plans as well as subdivisions have an impact on the county budget. The county decision makers need to understand the fiscal impact of the changes they are considering.

- **The county formally adopt the Flathead Community Wildfire Fuels Reduction/Mitigation Plan as the basis for land use policy in wildland areas.**
- **Development in high and extreme fire risk areas be required to submit a fire risk assessment completed by a professional consulting forester.**

The Flathead Community Wildfire Fuels Reduction/Mitigation Plan was done by professional foresters and is the best information available in assessing wildland fire risk in the county. Wildland fire is a constant and dangerous threat in many county areas. The costs of fighting fires and protecting life and property are high. Appropriate mitigation by property owners and developers, based on accurate information, can reduce the risk and costs.

- **Various entities are currently sampling and monitoring water quality in the county. The County Health Department should collect and evaluate this data so preventative action can be taken to prevent the spread of water pollution.**
- **High-risk areas over shallow aquifers and near riparian areas should be identified and protected by limiting the density of development.**
- **Urban areas such as cities and Census Designated Placed should develop storm water plans that will prevent untreated storm water from entering surface water and shallow aquifers.**
- **Complete stormwater plans for other rural areas with large areas of impervious surfaces.**

Widespread water pollution in Flathead County would significantly degrade the quality of county life. The effects of water pollution are slow but once established are very difficult to reverse. It is not enough to monitor Flathead Lake. By the time pollution reaches the lake it is present throughout the watershed. Water quality needs to be monitored upstream and in tributaries. Preventative action must be taken if water quality worsens in the area that is contribution the pollution. The United States

Geological Survey (USGS) has a plan to monitor water quality in the Flathead, *Attachment F*. The county should be a supporter and contributor to the implementation of this or a similar plan.

- **Form “Scenic View Corridors” at least ½ mile wide along US2 and US93 north of Kalispell.**
- **Within the corridor establish architectural design and landscape standards that would mitigate the effect of new buildings on the view-shed. Encourage the use of Planned Unit Developments in corridor areas.**
- **Encourage the use of conservation easements.**
- **Plan for the establishment of commercial areas where development would not degrade views or disrupt traffic on arterials.**

Protecting the views was an important concern expressed by citizens during the growth policy meetings. While it is not practical to protect the views from everyone’s front porch it is possible to protect the views that most residents and tourists enjoy as they travel in the valley.

- **Activate the Rural Lands Board mentioned in the growth policy.**
- **Provide the Rural Lands Board the staff and support to assist the county commission in developing options for rural landowners.**

Rural landowners need options if they wish to change the use of their land. These options are the responsibility of community to develop. The Rural Lands Board with the appropriate members and staff can work out the details of options and provide impartial advice to rural landowners. Appropriate use of rural lands will reduce the cost of public services to all county residents. A list of possible rural land use options are at *Attachment G*.

- **Come to a consensus between the members of the county commission and the planning board on what private property rights entail.**

In public discussions of land use, the notion of private property rights is often mentioned but seldom defined. This has the tendency to cloud the discussion. While citizens can have whatever definition of property rights they desire it is important that land use decision makers have a common understanding of the term that will lead to consistent and compatible decisions. *Attachment H* has a proposed outline of property rights that could be used as a basis for discussion.

**ATTACHMENTS:**

- A-** Task Force Assignment
- B-** Land Use Committee Members and Meeting Dates
- C-** Examples of View-shed Pollution
- D-** County Service District
- E-** County Road Strategy
- F-** USGS Water Quality Plan
- G-** Rural Land Use Options
- H-** Private Property Rights